

Command Security Corporation d/b/a Aviation Safeguards and Local 148, Production Workers Union, International Union of Allied Novelty and Production Workers, AFL-CIO. Case 29-RC-9442

January 28, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND ACOSTA

On March 15, 2000, the Union filed a petition seeking to represent a bargaining unit of all full-time and regular part-time baggage handlers employed by the Employer at its facilities at John F. Kennedy Airport (JFK), terminals 6 and 7 and Tower Airlines Terminal, Jamaica, New York.

The Employer provides baggage handling, wheelchair attendant and skycap services to air carriers who are subject to the Railway Labor Act (RLA). At the time of the hearing, the Employer had contracts to supply these services to United Airlines, British Airways, and Tower Air (the Carriers). The Employer contends that its employees perform work which is integral to the work of these Carriers and that the Carriers exercise significant control over its business and employees. Therefore, the Employer contends that its employees are subject to the RLA and that the National Labor Relations Board (the Board) lacks jurisdiction under Section 2(2) of the National Labor Relations Act. After a hearing, the Regional Director transferred the proceeding to the Board.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board finds as follows

As noted, the Employer provides baggage handling, wheelchair attendant, and skycap services pursuant to contracts with three Carriers. The record indicates that these Carriers exercise substantial control over the Employer's operations. Thus, the Employer is required to provide its services in compliance with the requirements of its contracts with the Carriers and must adjust its service to meet any new Carrier demands. While the Employer supervises its employees, the Carriers have retained the right to demand the removal of an employee. The Employer must comply with such a demand. A re-

quest by a carrier for a particular employee or employees for an assignment is honored by the Employer and, on occasion, the Carriers will direct the work of the employees. Under the terms of the contracts, the Employer's records on reimbursement and charges are subject to inspection by the Carriers.

Section 2(2) of the National Labor Relations Act provides that the term "employer" shall not include "any person subject to the Railway Labor Act." 29 U.S.C. § 152(2). Similarly, Section 2(3) of the Act provides that the term "employee" does not include "any individual employed by an employer subject to the Railway Labor Act." 29 U.S.C. § 152(3). The Railway Labor Act, as amended, applies to:

Every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner or rendition of his service.

45 U.S.C. § 151 First and 181.

The Board requested that the National Mediation Board (NMB) study the record in this case and determine the application of the Railway Labor Act to the Employer. The NMB subsequently issued an opinion indicating that, in its view, the Employer is subject to the Railway Labor Act. See *Aviation Safeguard*, 27 NMB 581 (Sept. 11, 2000).

Having considered the facts set forth above in light of the opinion issued by the NMB, we find that the Employer is engaged in interstate air common carriage so as to bring it within the jurisdiction of the NMB pursuant to Section 201 of Title II of the Railway Labor Act.¹ Accordingly, we shall dismiss the petition.

ORDER

IT IS ORDERED that the petition in Case 29-RC-9442 is dismissed.

¹ The NMB uses a two-pronged jurisdictional analysis: (1) whether the work is traditionally performed by employees of air and rail carriers; and (2) whether a common carrier exercises direct or indirect ownership or control. The NMB concluded that both prongs of the test had been met.